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Of Attorneys for United States of America

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

UNITED STATES OF AMERICA,

Case No. CR-09-30041 PA

v.

TRIAL BRIEF

CLIFFORD R. TRACY,

Defendant.

The Defendant Clifford Tracy (“Defendant”) is charged in a one Count Information with the unlawful and knowing use or occupation of National Forest System land by excavating soil and/or conducting mining operations, without an approved plan when such authorization was required, in violation of 36 C.F.R. § 261.10(p). This activity took place on or about September 9, 2009 in the District of Oregon, specifically the Rogue River-Siskiyou National Forest.

A Stipulated Exhibit List with exhibits has been filed along with this Trial Brief. The government’s evidence at trial will consist of those exhibits and the testimony of Forest Service law enforcement officer Sean Thomas and Forest Service mining geologist Kevin Johnson.

Exhibits 1-17 are communications and other documents from the administrative files and will be primarily used by both the government and the defense to make legal arguments. Neither party expects detailed testimony or review of these exhibits. Exhibits 18-30 are photographs previously submitted in the civil case as attachments to the Karla Gallegos Declaration in support of the Motion for a TRO. Exhibit 31 is a DVD of the mining site and law enforcement officers (including Officer Thomas) serving the Defendant with citations for his mining activity. Exhibit 32 is the Affidavit of Probable Cause signed by Officer Thomas. The defense may have additional exhibits and has agreed to provide those prior to trial.

The Defendant is charged with violation 36 C.F.R. § 261.10(p):

Section 261.10 Occupancy and Use

“The following are prohibited:

(p) Use or occupancy of National Forest System Lands or facilities without an approved operating plan when such authorization is required.”

Intent is not an element of the offense. 36 C.F.R. § 261.1(c). This is a Class B misdemeanor punishable by a \$500 fine and no more than six months imprisonment “unless otherwise provided.” 36 C.F.R. § 261.1(b). Title 18 U.S.C. § 3571 does provide otherwise in that Class B misdemeanors may be punishable by a fine of up to \$5,000.00.

The relevant facts are not in dispute and have been the subject of civil injunctive proceedings as well as motions for summary judgment. The Defendant did not have an approved operating plan when one was required. Defendant explicitly acknowledged this requirement by submitting in 2005 a proposed plan of operations and continuing to work with the Forest Service

through early 2009. Ultimately the Defendant became frustrated with the process but there is no doubt that authorization was required but not obtained when the Defendant began his mining operation. That operation was observed by Forest Service personnel on September 3rd and 9th and included the use of mechanized equipment, excavating holding ponds and other significant surface disturbance. The trial testimony and exhibits will establish the defendant's guilt beyond a reasonable doubt.

Dated this 30th day of October, 2009.

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